



U.S. Citizenship  
and Immigration  
Services

F1

FILE:

Office: GUATEMALA CITY, GUATEMALA Date:

APR 27 2004

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition to Classify Orphan as an Immediate Relative Pursuant to Section 101(b)(1)(F) of the  
Immigration and Nationality Act, 8 U.S.C. § 1101(b)(1)(F)

ON BEHALF OF PETITIONER:

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identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to  
the office that originally decided your case. Any further inquiry must be made to that office.

  
Robert P. Wiemann, Director  
Administrative Appeals Office

**DISCUSSION:** The Acting Officer-in-Charge (OIC) of the Guatemala City, Guatemala office denied the immigrant visa petition and the matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed the Petition to Classify Orphan as an Immediate Relative (Form I-600) on February 6, 2003. The petitioner is a 42-year-old married citizen of the United States. The beneficiary is three years old at the present time and was born in Guatemala on June 27, 2000.

The Acting OIC denied the petition, finding that the petitioner failed to establish that the beneficiary met the definition of an orphan found at section 101(b)(1)(F) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(b)(1)(F) because the petitioner had not established that the beneficiary's sole parent had irrevocably released the beneficiary for emigration and adoption.

On appeal, counsel for the petitioner submits two statements.

Section 101(b)(1)(F) of the Act defines orphan, in pertinent part, as:

a child, under the age of sixteen at the time a petition is filed in his behalf to accord a classification as an immediate relative under section 201(b), who is an orphan because of the death or disappearance of, abandonment or desertion by, or separation or loss from, both parents, or for whom the sole or surviving parent is incapable of providing the proper care and has in writing irrevocably released the child for emigration and adoption . . . .

In the I-600 petition, the petitioner indicated that the beneficiary was an orphan because she was the child of a sole parent and that her father's whereabouts were unknown. According to the evidence on the record, the beneficiary's mother was 16 years old when she gave birth to the beneficiary. According to a letter from the adoption agency, the beneficiary's mother placed the beneficiary in an orphanage after going to court to declare that she was unable to care for the beneficiary; hence, the court declared the beneficiary abandoned on March 15, 2002. The record contains a memorandum of investigation that details an interview of the beneficiary's birth mother. According to the memorandum and the biological mother's sworn statement dated April 7, 2003, the biological mother was coerced to give up the beneficiary for adoption and she wanted to reclaim the beneficiary as her own child. It is noted that the beneficiary's biological mother is illiterate.

The Acting OIC issued a Notice of Intent to Deny the petition on July 14, 2003. Counsel for the petitioner submitted a reply to the Notice of Intent to Deny, indicating that the beneficiary's birth mother denied that she had been coerced to give up the beneficiary for adoption in a sworn statement dated August 22, 2003 and that she does not want to take back the beneficiary.

On appeal, the petitioner asserts that the beneficiary's biological mother gave up her parental rights and cannot reclaim the beneficiary. Counsel for the petitioner asserts that the Court of First Instance of Minors of Escuintla awarded legal custody of the beneficiary to the orphanage, Hogar Nuestras Senoras de Lourdes y Fatima and that the biological mother's relinquishment is on record with the court. Counsel for the petitioner further asserts that the beneficiary's biological mother is willing to submit to another interview with CIS.

The Acting OIC determined and the AAO concurs that the petitioner failed to overcome the OIC's objection to approving the petition.

The beneficiary's biological mother is illiterate. The record reflects that she was a minor, and homeless when she relinquished the beneficiary and signed (fingerprinted) a release. During an interview with an agent of CIS, the beneficiary's biological mother stated that she had been coerced into giving up the beneficiary and that she wanted to reclaim the beneficiary.

The statement of the beneficiary's mother submitted on appeal that indicates that she is retracting her claim that she had been coerced to give up her child is not persuasive given that it is a written statement taken at the petitioner's attorney's office and that she is illiterate.

In review, there is insufficient evidence to establish that the beneficiary has been irrevocably released for adoption and emigration.

In visa petition proceedings, the burden of proof rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden; it is concluded that the petitioner has not established that the beneficiary is eligible for classification as an orphan pursuant to section 101(b)(1)(F) of the Act, 8 U.S.C. § 1101(b)(1)(F).

**ORDER:** The appeal is dismissed.